IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20/09/2004

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.NO.9640 OF 1997

N.Vasu Chandra Babu ..Petitioner

-vs-

1.The Presiding Officer
The Labour Court
Madurai

2.The Management
The Nagammal Mills Ltd.,
Nagercoil ..Respondents

Petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus calling for the records in I.D.No.96/82 on the file of the 1st respondent, the order dated 25.11.88 and quashing the same as far as this petitioner is concerned and to direct the second respondent to reinstate the petitioner in their Mills with all back benefits from the date of termination.

!For petitioner : Mr.P.Narayanamoorthy

^For respondent No.2:Mr.V.Karthic
for T.S.Gopalan

:ORDER
The petitioner seeks a writ of Certiorarified Mandamus calling for the records in I.D.No.96/82 on the file of the 1st respondent his order dated 25.11.88 and quash the same as far as this petitioner is concerned and direct the second respondent to reinstate the petitioner in their Mills with all back benefits from the date of termination.

2.The petitioner and other 32 employees were employed in Reeling and spinning Department of the second respondent from 10.8.1977 and they were provided with E.S.I. Benefit only and when they requested the second respondent to provide the attendance Time Card, the Management denied work for them; that therefore, all the workers raised a dispute before the first respondent Labour court and when I.D.No.96/82 was in progress, the Management reinstated 24 workmen and 9 persons were left out; that the Labour Court dismissed the Claim Petition of the petitioner and others on the ground that

the claimants have failed to prove that they had worked in the second respondent Mill for 240 days in a calendar year. Hence, this Writ Petition is filed by the petitioner/workman with the relief extracted supra.

3.The learned counsel for the petitioner would submit that the petitioner has worked in the mill from 1977 to 1981 and the second respondent refused to give work to the petitioner; that fresh recruitment was made by the Management after terminating the existing workmen; that among 33 workers, only some were reinstated and the remaining workers have been treated unequally and were not provided reinstatement; that the fact that E.S.I.coverage was given to the petitioner would itself make it clear that the petitioner has worked continuously and therefore, the Writ Petition has to be allowed.

4.The learned counsel for the 2nd respondent would submit that the the Labour Court passed the award in I.D.No.96/1982 on 17.1.1989 and the present Writ Petition was filed on 28.4.1997; that since the Writ Petition was filed after a period of 8 years, the Writ Petition should not be entertained on the ground of laches.

5.The learned counsel for the 2nd respondent would further state that there was a 12(3) Settlement and the workers including the petitioner have worked as casuals. The petitioner has worked only for 69 days. He has not worked for 240 days. But, he has stated that he was employed for two years. Since the petitioner has not completed 240 days in a year he is not entitled for reinstatement.

6.The learned counsel for the 2nd respondent has relied upon the following two decisions in support of his arguments.
(i) 2002 Vol.8 SCC page 400 at page 405 para 15.
(ESSEN DEINKI V. RAJIV KUMAR)Para 15 of the said decision is extracted hereunder:
"15.Significantly, the appellant's contention does not run counter to the opinion expressed in American Express. It has been the definite contention of Mr.Ranjit Kumar that even the test laid down under American Express does not stand to acceptance of the workmen's case. The requirement of the statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 2 40 days in the last preceding 12 month's period. As noticed hereinbefore, it has been the definite case of the workman concerned whilst at the stage of evidence that he has not worked for 240 days, as noticed hereinbefore in this judgment more fully. And it is on this score Mr.Ranjit Kumar has been rather emphatic that the High Court has thus fallen into a grave error in reversing the order of the Labour Court. It is a finding of fact which the High Court cannot possibly overturn without assailing the order of the Labour Court as otherwise perverse. The High Court unfortunately has not dealt with the matter in that perspective."

(ii)2002 Vol. 3 SCC 25 (RANGE FOREST OFFICER V S.T.HADIMANI)

The relevant portion of the said decision is extracted hereunder:

`In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."
Relying on the former decision, the learned counsel for the 2nd respondent would submit that the requirement of the statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 month's period. Further relying on the latter decision, the learned counsel would further submit that the onus/burden is not on the management to show that the workman has worked for more than 240 days and it is for the employee/workman to provide sufficient evidence for any Court or Tribunal to come to the conclusion that the employee/workman has worked for 240 days.

7.On the basis of the decisions cited supra, the learned counsel for the 2nd respondent further submits that the workman has worked only for 69 days in a year and he has not produced any proof to the fact that he has worked for 240 days and hence, the Writ Petition is liable to be dismissed.

8.Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent as well and the materials placed on record have also been perused.

9.The Writ Petitioner has worked only for 69 days. Moreover, the petitioner has challenged the said award after a period of 8 years for reinstatement. Though the Petitioner has challenged the award for reinstatement on the ground that he has worked for 240 days in a calendar year, he has not proved the same by any evidence. As per the decisions cited above by the learned counsel for the 2nd respondent, it is for the workman to adduce sufficient evidence to prove that he has worked for 240 days in a calendar year as casual. The workman/ petitioner did not adduce sufficient evidence to prove that he worked for 24 0 days in a calendar year. He has also filed the Writ Petition after a period of 8 years which is too long a time to reckon with. No proper reasons were offered nor established in a convincing and acceptable manner to the requirements of law and hence the Writ Petition has to be held unacceptable. It fails and the same is ordered.

In result,
(i)For the above reasons assigned besides the reason of laches, the writ

petition only becomes liable to be dismissed and the same is dismissed accordingly.
(ii)No costs.

index:yes

internet:yes
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To

1.The Presiding Officer
The Labour Court
Madurai